TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #95-02

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Whether [THE TAXPAYER] is subject to Tennessee franchise/excise taxes as a foreign corporation doing business in Tennessee when organized pursuant to IRC § 501(c)(2) and formed for the purpose of holding property and paying the income therefrom, less expenses, to its sole shareholder, which is a pension plan subject to the provisions of the Employee Retirement Income Security Act (ERISA).

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department, but applicable only to the individual taxpayer being addressed.

Under the provisions of T.C.A. § 67-1-109(a)(2), this letter ruling may be revoked or modified by the commissioner, or his successors, at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

(A) The taxpayer must not have misstated or omitted material facts involved in his transaction (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
(C) The applicable law must not have been changed or amended;
(D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] is a Delaware chartered corporation doing business in Tennessee. It is exempt from federal income taxes under IRC § 501(c)(2). It was created by a pension fund to hold title to its real estate interests. Income collected from such interests, less expenses, is turned over to the parent which itself is exempt from federal income taxes under IRC § 501. [THE TAXPAYER]'s parent and sole shareholder is a pension plan subject to the provisions of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461. [THE TAXPAYER] is now in the process of amending its Tennessee Certificate of Authority to reflect its "not-for-profit" status.

Revenue Ruling 94-19 previously issued on this issue was unfavorable to the taxpayer because certain facts with regard to the pension plan being subject to ERISA were omitted from the corporation's Revenue Ruling Request. Revenue Ruling 94-19 has been rescinded and this Letter Ruling is being issued in its place on the basis of the new additional facts submitted.

ISSUE

Is [THE TAXPAYER] subject to Tennessee corporate franchise/excise taxes?

RULING

No.

ANALYSIS

ERISA PREEMPTS ALL
STATE TAX LAWS

Title 29 U.S.C. § 1144(a) and (c)(1) of ERISA provides as follows:

> "(a) Except as provided in (b) of this section, the provisions of this title and Title IV shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in § 4(a) (29 U.S.C.S. § 1003(a)) and not exempt under § 4(b) (29 U.S.C.S. § 1003(b)). This section shall take effect on January 1, 1975."

> "(c)(1) The term 'State Law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. . . ."

It has been held that all state tax laws are preempted by ERISA, even those that are neutral laws of general application, unless the effect of state law is merely tenuous, remote or peripheral. Even state tax laws of general application, representing a traditional exercise of state authority, may be preempted when they "relate" to ERISA plans. *Morgan Guaranty Trust Co. v. Tax Appeals Tribunal of New York State Dept. of Taxation and Finance,* 587 N.Y.S.2d 252 (Ct. App. 1992).

Since [THE TAXPAYER] was created pursuant to a pension plan which owns 100% of its outstanding stock and is subject to ERISA, and all the income, less necessary expenses earned by [THE TAXPAYER] are passed through to the qualified pension plan, it appears that Tennessee corporate franchise/excise taxes as would otherwise be applied to [THE TAXPAYER], are preempted by Title 29 U.S.C. 1144(a). Such taxes "relate" to the ERISA employee benefit plan of the parent corporation. If franchise/excise taxes were applied to [THE TAXPAYER], funds which would be available to plan beneficiaries would be depleted. Structure and administration of the plan and the plan's investment strategy would also be affected. This would defeat the purpose of Congress in enacting ERISA Legislation. *Id.* at 256.

All Tennessee corporate franchise/excise taxes paid by [THE TAXPAYER] are subject to refund provided they are not barred by the statute of limitation (T.C.A. § 67-1-1802) and subject to approval of the Attorney General and Reporter under T.C.A. § 67-1-1802(a)(6)(C).

Arnold B. Clapp, Special Counsel

APPROVED: Joe Huddleston

DATE: January 19, 1995